

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-259-S - ORDER NO. 2005-191
DECEMBER 8, 2005

IN RE:	Application of Bush River Utilities, Inc. for)	ORDER RULING ON
	Approval of a New Schedule of Rates and)	REHEARING,
	Charges for Sewerage Service Provided to)	RECONSIDERATION,
	Commercial Customers in All Areas Served.)	AND CLARIFICATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing or Reconsideration and Motion for Clarification of Commission Order No. 2005-83 filed by the Office of Regulatory Staff (ORS) in this Docket concerning an Application filed by Bush River Utilities, Inc. (BRUI). We deny rehearing, grant reconsideration in part and grant the Motion for Clarification, as described below.

First, ORS alleges that this Commission erred by requiring BRUI to post a performance bond by the end of BRUI's construction. ORS contends that this Commission should have required BRUI to obtain the required performance bond immediately, based on the provisions of S.C. Code Ann. Section 58-5-720 (Supp. 2004) and 26 S.C. Code Ann. Regs. 103-512.3. ORS also states that the date of "the end of BRUI's construction" is unclear and indeterminable. In summary, ORS requests that this Commission reconsider the portion of Order No. 2005-83 that states that BRUI must "comply with the bonding requirement by completion of construction of its new

treatment facility,” and provide a more reasonable, definite and immediate time period for BRUI to post the \$100,000 bond.

Based upon testimony in the record, the Commission determined that BRUI could not immediately obtain a \$100,000 performance bond. Thus, the Commission set the bonding requirement by the completion of construction of the treatment plant. We believe that requiring BRUI to immediately post a \$100,000 performance bond, which it could not obtain, would result in a shut down of the system. Currently, there are no alternative providers of sewer service for BRUI customers. The Commission has determined that a shut down of the BRUI system would not be in the public interest. No evidence has been presented to change the Commission’s determination concerning the ability of BRUI to obtain a performance bond immediately or the harm to the public interest if the system shut down. The Commission, however, agrees with ORS that the construction completion date is uncertain.

We therefore now hold that BRUI shall post a \$100,000 performance bond by the earlier of one year from the date that the Department of Health and Environmental Control (DHEC) issues a construction permit to BRUI for the treatment facility, which is November 29, 2005, or the date on which BRUI applies to DHEC for final operational approval of the treatment facility. We believe that this gives more certainty as to when the Company must post the bond, while at the same time recognizing the financial difficulties faced by this Company in its operations, and its difficulty in obtaining the required bond.

The Commission acknowledges, as ORS noted, that the posting of the bond is for the protection of the public. We do not, however, believe that forcing the owners of the utility into a tenuous and potentially terminal financial position in order to obtain the bond is either proper or in the public interest. We find that it is in the public interest to keep the utility running, while at the same time ordering the utility's owners to come into compliance with the bonding statute by a date in the near future. Only by balancing the current financial integrity of the utility with the ultimate increase in protection that an augmented bond will provide, can the public interest be best served.

Further, as pointed out by ORS, pursuant to the provisions of 26 S.C. Code Ann. Regs. 103-501.3, the Commission can, and hereby does, waive 26 S.C. Code Ann. Regs. 103-512.3 to the extent that it requires an appropriate bond to be provided **prior** to operating the Company's utility system. The Commission believes that compliance with this regulation would create unusual difficulty for the Company as described above.

In contrast to its authority to waive its own regulations upon an appropriate finding, the Commission fully agrees with ORS that it has no authority to waive the statutory requirements of S.C. Code Ann. Section 58-5-720 (Supp. 2004). Indeed, it is not doing so in this ruling. Unlike the provisions of 26 S.C. Code Ann. Regs. 103-512.3, which require appropriate bonding **prior** to operation of a utility system, S.C. Code Ann. Section 58-5-720 has no such prohibition. Rather, the statute requires that, before granting consent to operate a treatment facility, the Commission prescribe as a condition to its consent that the utility **shall** file a bond with sufficient surety. The Commission's order requires that such a bond be filed by the Company, and additionally sets out the

specific amount required. By this current order, the Commission sets a date certain by which the Company **shall** file such a bond. Accordingly, the reconsideration request of ORS as to the bonding requirement is granted in part by establishing a date certain in the near future for the Company to obtain the bond.

Also, we grant the ORS Motion for Clarification as to its audit responsibilities prior to the Company's implementation of Phase-II rates in this case. Accordingly, we set out the following parameters for such an audit:

1. The Company must certify to the Commission and to ORS that it has completed construction at Bush River Utilities, Inc., has met all of the other requirements, and that the Company is ready for the audit.

2. The ORS should concentrate on the expenditures made for plant upgrades. The Commission does not envision a re-creation of the whole case (audit of revenues, expenses, calculation of operating margin, etc.); rather, ORS must determine whether the Company has expended at least \$932,278 in plant upgrades and that the new plant is complete and in service.

3. ORS must certify that the bonding requirements have been met.

4. ORS must certify the Company is using the NARUC chart of accounts to ORS's satisfaction.

5. ORS must certify that the Company is in compliance with all DHEC requirements.

6. ORS is given sixty (60) days from the date that ORS commences the audit to complete its audit and file a report with the Commission.

When ORS certifies to the Commission that the Company has met all of the conditions of Order No. 2005-83, Phase-II rates can be placed into effect. Regardless of when BRUI notifies the ORS to perform the audit, the ORS must certify that the bonding requirement has been met no later than November 29, 2005.

ORS also alleges that the Commission erred by not considering the testimony of Mr. Willie J. Morgan concerning his recommendation concerning depreciation of the new sewer plant. ORS notes that in Adjustment Z, Depreciation Expense of Order No. 2005-83, the Commission states that ORS took no position on the service life of the proposed sewer treatment plant upgrades.

ORS states that while, at the time of the hearing, ORS did not support the Phase-II increase requested by the utility, and accordingly, did not make an accounting adjustment for the new sewer plant during the second phase, ORS did make a recommendation as to the service life of the proposed upgrades. Mr. Morgan testified that “ORS recommends that the existing WWTF (wastewater treatment facility) cost be capitalized and depreciated over 32 years and also that any new WWTF cost be capitalized and depreciated over a 32-year period.” (ORS Witness Morgan Prefiled Testimony pp. 4-5.) Mr. Morgan further states in his testimony that “these recommendations are based on the conclusions outlined in the Florida Public Service Commission Water and Wastewater System Regulatory Law as recommended by the NARUC staff.” (*Id.* at p. 5, ll.2-4.) ORS then criticizes the evidence presented by BRUI to support its request for a twenty-five year service life.

In late-filed Hearing Exhibit 6, the Company provided the information supporting a 20-year depreciation life. The Commission finds particularly relevant the letter of Mr. Combs, PE, stating that the equipment for BRUI's wastewater treatment facility has a 20-year design life. Hearing Exhibit 6 supports a shorter depreciation life than the 25-year depreciation life BRUI requested in its application. Accordingly, we believe that our original 25-year depreciation life as granted in Order No. 2005-83 is reasonable.

In summary, although we hold that ORS did present a depreciation recommendation at the hearing, we find the Combs letter that specifically relates to BRUI's wastewater treatment facility is more credible and is entitled to more weight in this case than general guidelines from the Florida Public Service Commission. Accordingly, although we agree that ORS presented a recommendation on the matter, we deny that portion of the ORS Petition that requests rehearing or reconsideration of the 25-year depreciation life as stated in Order No. 2005-83.

Pursuant to the foregoing, we make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. ORS has filed a Petition for Rehearing or Reconsideration and Motion for Clarification of Order No. 2005-83.
2. The Petition for Reconsideration is granted in part, as is the Motion for Clarification. The Petition for Rehearing is denied.
3. Compliance with 26 S.C. Code Ann. Regs. 103-512.3 would impose a potentially fatal financial burden on the Company. Accordingly, the Commission waives

that regulation to the extent that it requires an appropriate bond to be provided prior to operating the Company's utility system.

4. A time certain in the near future should be set for the Company to obtain the required \$100,000 bond. Accordingly, we hold that the performance bond must be furnished as described above.

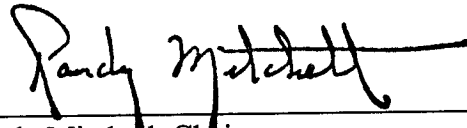
5. We grant clarification and set out parameters for the ORS audit of the Company as described above.

6. While we recognize that ORS took a position on the service life of the proposed upgrades to BRUI's plant, we believe that the Combs letter presented by the Company represents evidence in this case that is specific to the Bush River plant. We reject the ORS position, and deny rehearing or reconsideration of the 25-year depreciation life as stated in Order No. 2005-83.

ORDER

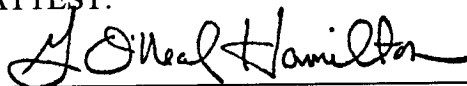
Reconsideration is granted in part and the Motion for Clarification is granted. Rehearing is denied. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Randy Mitchell, Chairman

ATTEST:



G. O'Neal Hamilton, Vice Chairman
(SEAL)